

Nondiscrimination and Anti-Harassment

Policy CP001 Volume: 2, College Responsible Administrator: Deputy to the President Responsible Office: Affirmative Action Officer/Title IX Coordinator Issued: 2007 Last Updated: August 2017

Policy Statement

The Fashion Institute of Technology ("FIT" or "the college") is committed to prohibiting discrimination, whether based on age, citizenship status (except as required to comply with law), color, creed, disability, ethnic background, familial status, gender, gender identity, genetic information, marital status, military service or veteran status, national origin, pregnancy (including childbirth and breastfeeding), race, sex, sexual orientation, transgender status, unemployment status, an individual's relationship or association with a member of a protected category, a caregiver, or any other criterion prohibited by applicable federal, state, or local laws.

FIT is also an equal opportunity employer. The college provides members of the campus community who believe they have been the subject of discrimination or discriminatory harassment with mechanisms for seeking redress and strictly prohibits retaliation against individuals who participate in that process in good faith. Everyone at FIT is expected to adhere to the applicable policies and to report conduct or behavior they believe to be in violation of this policy

Reason for the Policy

FIT is committed to providing an educational and employment environment that encourages and fosters appropriate conduct, in which all individuals are treated with dignity and respect. Discrimination, discriminatory harassment, and retaliation are behaviors that are incompatible with the standard of conduct required of a member of the FIT community in the workplace or in any college-related setting. This policy is also intended to be in compliance with federal, state, and local laws prohibiting discrimination, harassment, and retaliation.

Who is Responsible for this Policy

- Affirmative Action Officer / Title IX Coordinator¹
- Dean of Students
- Vice President for Human Resource Management and Labor Relations
- All vice presidents, deans, directors, and supervisors

¹ Throughout this policy, the Affirmative Action Officer is also the Title IX Coordinator.

Who is Affected by this Policy

- Employees
- Students
- Guests and Visitors
- Contractors, Vendors, and other Third Parties

Definitions

- **Complainant:** the individual making the allegation(s) of discrimination, discriminatory harassment, or retaliation. This may or may not be the individual who is being discriminated against, harassed, or subjected to retaliation. In cases where the complainant is not the individual alleging to have suffered discrimination, harassment, or retaliation, such complainant may be referred to as the third-party complainant.
- **Discrimination:** treating persons less favorably or differently because of their actual or perceived protected characteristics, including age, citizenship status (except as required to comply with law), color, creed, disability, ethnic background, familial status, gender, gender identity, genetic information, marital status, military service or veteran status, national origin, pregnancy (including childbirth and breastfeeding), race, sex, sexual orientation, transgender status, unemployment status, an individual's relationship or association with a member of a protected category, a caregiver, or any other criterion prohibited by applicable federal, state, or local laws.
- **Discriminatory Harassment:** subjecting an individual on the basis of his or her protected characteristics (as set forth above in Discrimination) to humiliating, abusive, or threatening conduct that denigrates or shows hostility or aversion toward an individual or group that is sufficiently severe, pervasive, or persistent so as to interfere with or limit a person's ability to participate in or benefit from FIT's programs or activities. Discriminatory harassment can take different forms and can consist of oral, written, graphic, or physical conduct relating to an individual's protected characteristics; accordingly, the determination of what constitutes discriminatory harassment will vary according to the particular context and circumstances. Discriminatory harassment includes sexual harassment and gender-based harassment, defined herein, which are also prohibited by and typically investigated under FIT's Sexual Misconduct Response policy.
- **Gender-Based Harassment:** acts of aggression, intimidation, stalking, or hostility based on an individual's actual or perceived sex, gender identity, transgender status, gender expression, and nonconformity with gender stereotypes that is sufficiently serious to adversely affect an individual's educational, campus life, or employment experience. The effect will be evaluated based on the perspective of a reasonable person in the position of the Complainant (as defined herein). Members of FIT's community who believe that they have experienced gender-based harassment should also review FIT's Sexual Misconduct Response policy, as it may also apply depending on the circumstances.
- **Preponderance of the Evidence:** the standard of proof applicable in discrimination, discriminatory harassment, and retaliation investigations, which asks whether it is "more likely than not" that the conduct occurred.

- **Respondent:** the individual alleged to have engaged in the discrimination, discriminatory harassment, or retaliation.
- **Retaliation:** adverse action against an individual for reporting a violation of this policy in good faith or against any individual (for example, a Complainant, a Respondent, a witness, etc.) for participating in any way in the investigation or disciplinary process. Retaliation includes harassment and intimidation, including but not limited to violence, threats of violence, property destruction, and adverse educational or employment consequences and bullying. Any individual or group of individuals, not just a Respondent or Complainant, can be responsible for retaliation.
- Sexual Harassment: unwelcome conduct of a sexual nature that is sufficiently severe, pervasive, or persistent so as to interfere with or limit an individual's ability to participate in or benefit from FIT's programs or activities. It can take different forms; accordingly, the determination of what constitutes sexual harassment will vary according to the particular context and circumstances. Sexual harassment is often imposed upon a person in an unequal power relationship through the abuse of authority. Central to this concept is the use of implied reward or threat of deprivation that interferes with the academic or work effectiveness of the victim. Examples of sexual harassment include, but are not limited to:
 - Making unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature;
 - A pattern of conduct intended to discomfort or humiliate, or both, that includes comments of a sexual nature or sexually explicit statements, questions, jokes, or anecdotes whether delivered in person, in writing, by email, voice-mail message, social media, blogs, chats, or any other communication medium;
 - A pattern of conduct that would discomfort or humiliate, or both, that includes one or more of the following: unnecessary touching, patting, hugging, or brushing against a person's body; remarks of a sexual nature about a person's clothing or body; or remarks about a person's sexual activity or speculation about a person's sexual experience;
 - Direct or implied threats that submission to such conduct is made explicitly or implicitly a term or condition of an individual's participation in an educational program, grades, or letters of recommendation;
 - Direct or implied threats that submission to such conduct is made explicitly or implicitly a term or condition of an individual's continued employment, work status, promotion, or other condition of employment;
 - Such conduct is intended to interfere, or results in interference, with an employee's work performance, or creates an intimidating, hostile, or offensive work environment.

Members of FIT's community who believe that they have experienced sexual harassment should also review FIT's Sexual Misconduct Response policy, as it may also apply depending on the circumstances.

Principles

• Scope of this Policy

This policy applies to allegations of discrimination, discriminatory harassment (e.g., discrimination or harassment that is based on a protected characteristic), and retaliation.

In addition to the prohibited conduct mentioned in this policy, FIT also prohibits sexual misconduct (including sexual assault, stalking, domestic and intimate partner violence, and sexual and gender-based harassment) and harassment that is not based on a protected characteristic. Definitions of such prohibited conduct and the applicable procedures for such misconduct are set forth in FIT's Sexual Misconduct Response policy, the Student Code of Conduct, and FIT's Employee Policy Manual. Members of the FIT community should consult these policies for further information. FIT maintains the discretion to determine which policy applies and is most appropriate to the particular situation. In general, however, FIT's response to allegations involving gender or sex discrimination that do not involve sexual misconduct will likely fall within the purview of this policy.

This policy governs the conduct of (i) all the members of FIT's community, such as employees and students, and (ii) non-members of FIT's community, such as contractors, vendors, and visitors. Non-members of FIT's community are both protected by and subject to this policy. A non-member may make a complaint or report of a violation of this policy committed by a member of FIT's community. A non-member may also be permanently barred from FIT or subject to other restrictions for failing to comply with this policy. This policy applies to conduct that occurs on and off FIT's campus, as further described below.

• On-campus violations

This policy forbids discrimination, discriminatory harassment, and retaliation anywhere on campus. On-campus includes FIT-owned, -leased, -operated, or -controlled property, streets and pathways contiguous to FIT property, or in the immediate vicinity of campus. It also includes the property, facilities, and leased premises of organizations affiliated with FIT, including FIT housing and all actions by a member of the FIT community that involve the use of FIT's computing and network Resource from a remote location, including but not limited to accessing email accounts or any social media platforms.

• Off-campus violations

This policy also applies to conduct that occurs off FIT's campus when the conduct is associated with an FIT-sponsored activity, such as travel, study abroad, research, internship programs, or in any other off-campus location when such conduct may have a continuing adverse effect or could create a hostile environment on campus.

• Privacy

In general, FIT will reveal information about its investigations and adjudication for conduct prohibited by this policy only to those who need to know the information in order to carry out their duties and responsibilities, unless otherwise required or prohibited by federal, state, or local laws, rules, or regulations. Questions about who may receive such information should be directed the Affirmative Action Officer. All students and FIT personnel participating in an investigation, proceeding, or hearing are expected to maintain the privacy of the process. This does not prohibit a Complainant or Respondent from obtaining the assistance of family, friends, legal or non-legal advisors (as described below), union representatives, counselors, therapists, clergy, doctors, or similar Resource.

• False Complaints

Individuals who knowingly and intentionally make false reports will be subject to disciplinary action.

Non-Retaliation

All members of the FIT community are prohibited from engaging in retaliation against an individual who, in good faith, reports or complains of a violation of this policy or participates in any way in the investigation or disciplinary process (for example, a Complainant, a Respondent, a witness, etc.). Reports or complaints of retaliation will be investigated and any individuals found to have engaged in retaliation may be subject to disciplinary action in accordance with the processes and procedures set forth in this policy or, depending on the nature of the allegations, disciplinary procedures under FIT's Code of Student Conduct (for students) or as determined by the Vice President for Human Resource Management and Labor Relations or their designee (for employees).

• Role of the Affirmative Action Officer

The Affirmative Action Officer and supporting staff may receive initial inquiries, reports, complaints, and requests for consultation and counseling. Assistance will be available whether or not a formal investigation is contemplated or even possible. The Affirmative Action Office will respond to such inquiries, reports, complaints, and requests as promptly as possible and in a manner appropriate to the particular circumstances. Members of the Affirmative Action Office are trained in investigating and resolving complaints of violations of this policy. They are available for assistance with submitting a complaint and will remain impartial during an investigation. The Affirmative Action Office does not represent any individual or department, but it does advocate on behalf of the college's commitment to equal opportunity in an environment that is free from bias, discrimination, discriminatory harassment, and retaliation. If appropriate under the circumstances, the Affirmative Action Office may solicit information concerning any factors that might prejudice an objective evaluation of the evidence and shall reassign an investigation if a conflict or potential conflict emerges. Additionally, the Affirmative Action Office may at any time, according to the procedures set forth herein, refer to or consult with:

- o Human Resource Management and Labor Relations, when the accused is an employee;
- o Dean of Students, when the accused is a student; or
- The appropriate supervisory personnel when the accused is a contractor or third-party vendor.

• Non-Legal Advisor and Legal Counsel

Complainants and Respondents may have a non-legal advisor or legal counsel present at any meeting or hearing during the investigation, adjudication, or appellate process. Students and employees must provide advance written notice to the Affirmative Action Officer of the anticipated presence of a non-legal advisor or legal counsel, and their affiliation with the student or employee, at least three (3) business days prior to their scheduled meeting or hearing. Failure to present timely notice will result in a rescheduling of the meeting or hearing. Such non-legal advisor or legal counsel accompanying a student or employee is not allowed to participate in the investigation or disciplinary process, including responding to questions on the student or employee's behalf, offering arguments on the student or employee's behalf, or otherwise participating in disciplinary proceedings other than to speak with the student or employee before, after, or on breaks from the meeting or hearing; except that, in accordance with applicable law and the collective bargaining agreement between FIT and United college Employees of FIT, employees in the collective bargaining unit may have the right to request that a union representative be present during meetings or hearings related to the process and to have a union representative participate in the meetings or hearings to the extent permitted by

the collective bargaining agreement and law. Students will be required to sign a FERPA release allowing the non-legal advisor or legal counsel to hear protected student information pertaining to the case. The non-legal advisor or legal counsel will be required to leave the meeting or hearing if they violate any of the above terms.

Responsibilities

N/A

Procedures

General Procedures

The following procedures have been adopted by FIT to receive, investigate, and resolve complaints of discrimination, discriminatory harassment, and retaliation. FIT's procedures seek to ensure a prompt, fair, and impartial investigation and resolution and will seek to resolve all complaints as expeditiously as possible. These procedures shall apply when FIT receives a complaint, whether such complaint is received formally or informally, in writing, orally or otherwise. FIT may also commence an investigation if it becomes aware of potential discrimination, discriminatory harassment, or retaliation, regardless of whether someone makes a report or complaint. There are no time limits for reporting discrimination, discriminatory harassment, or retaliation, discriminatory discriminatory harassment, or retaliation.

The standard of evidence used in the adjudication of these cases will be the preponderance of the evidence. During any portion of the procedures detailed hereafter, the parties shall not employ audio or video taping devices.

• Investigation and Disciplinary Procedures

For purposes of this policy, the status of the Respondent will determine the applicable disciplinary procedures. For example, if the Respondent is a student, the procedures used will be those delineated for students in this policy. If the Respondent is an employee, the procedures used will be those delineated for employees in this policy. This determination is within FIT's discretion. Some complaints may be more appropriately handled under other FIT policies, such as the Sexual Misconduct Response policy, the Student Code of Conduct, or FIT's Employee Policy Manual. FIT maintains the discretion to determine which policy is most appropriate and applicable under the circumstances.

 Reporting Complaints and Investigation Procedure Where a Student is the Respondent Any person who believes they may have been a victim of or who believes they may have witnessed discrimination, discriminatory harassment, or retaliation committed by a student should report the incident to the Affirmative Action Officer in the Office of Compliance and Audit at 212 217.3360, or 333 Seventh Avenue, 16th Floor. Alternatively, such incidents may be reported to any senior administrator, dean, department director, department chairperson or coordinator, or any other person with supervisory responsibility. Although such complaints need not be in writing, FIT strongly encourages individuals to file a written complaint. Any person with supervisory responsibility who receives a complaint, formally or informally, in writing, orally or otherwise, of discrimination, discriminatory harassment or retaliation must report such information to the Affirmative Action Officer immediately.

Pre-Investigation

The Affirmative Action Officer will review the reported complaint and conduct an initial assessment to determine if the case falls within the scope of this policy and its procedures. Following the initial assessment, the Affirmative Action Officer may take any of the following actions:

- If the Affirmative Action Officer determines that the complaint, even if substantiated, would not rise to the level of a policy violation, or the Affirmative Action Officer determines that there will be insufficient information to investigate the matter, the Affirmative Action Officer may dismiss the report. Under these circumstances, the Affirmative Action Officer will inform the parties of the dismissal.
- If the Affirmative Action Officer determines at any point that a complaint may be resolved through an informal process, or upon request of either the Complainant or the Respondent at any time prior to the conclusion of the investigation, the Affirmative Action Officer may begin that process by first discussing the possibility with the Complainant.
- If the Affirmative Action Officer determines that the complaint is outside the scope of this policy and would be more appropriately handled by another office, the Affirmative Action Officer may refer the report to another office for review. The Affirmative Action Officer will inform the parties of the transfer in writing.
- If the Affirmative Action Officer determines that the complaint would, if substantiated, constitute a violation of this policy, the Affirmative Action Officer will initiate an investigation and determine appropriate interim measures and accommodations, if any.
- To the extent necessary to prevent violations of this policy, the Affirmative Action Officer may take any interim measures necessary to protect individuals including, but not limited to, suspending students alleged to have violated this policy², providing support services, changing living arrangements or course schedules, assignments, or tests, and providing increased monitoring, supervision, or security at locations or activities where the misconduct allegedly occurred.

o Investigation

The Affirmative Action Officer will interview the parties to the complaint separately and advise them of their rights at the outset of the investigation, including their right to have a non-legal advisor or legal counsel present at any meeting or hearing, as set forth above. The Affirmative Action Officer will notify the Respondent of the facts underlying the allegations of discrimination, discriminatory harassment, or retaliation. Each party will be notified prior to any meeting or hearing they are eligible to attend. The Affirmative Action Officer

² Should the Affirmative Action Officer believe that interim suspension is an accommodation under consideration during an investigation, the Affirmative Action Officer will confer with the Dean of Students. The Dean of Students will then make the final determination as to whether interim suspension is appropriate during an investigation.

will interview witnesses as necessary. At the conclusion of each interview, the Affirmative Action Officer will review the notes with the interviewee.

• Final Report

If the Respondent does not accept responsibility for the charges at any point prior to the issuance of a final report, and the Complainant and the Respondent have not consented to an informal resolution process, after the conclusion of the investigation of the facts, the Affirmative Action Officer will prepare a report, which will include findings of fact, findings of responsibility, and the Affirmative Action Officer's rationale for his or her decisions.

o Disciplinary Sanctions

If a student is found responsible for violating this policy, the final report and the entire case file will be forwarded to the Dean of Students to determine the appropriate sanction. The student's entire academic and/or disciplinary record will be considered in issuing a sanction. FIT may impose a disciplinary sanction which may include, but is not limited to, suspension, expulsion, transcript notations, and one or more of the disciplinary sanctions listed in the Code of Student Conduct. If the Dean of Students determines, upon review of the final report and case file, that there may be justification to suspend or expel a student, a hearing before the Student Conduct Council will be scheduled solely for consideration of the sanctions of suspension or expulsion. The procedures set forth in the Code of Student Conduct will otherwise apply to the proceedings, including that where the Council declines to impose suspension or expulsion, the matter will be remanded to the Dean of Students to consider imposition of a sanction. If, upon review of the final report and case file, the Dean determines that there are not grounds to consider suspension or expulsion of a student, the Dean may impose disciplinary sanctions. The Dean shall consider the student's entire academic and/or disciplinary record in issuing a sanction. At the appropriate time, the Complainant and Respondent will be sent letters regarding the outcome of the investigation. Depending on the circumstances, the letter may or may not include notice of the sanctions imposed or the need for further action.

• Appeals

Students may appeal decisions in the following manner:

Students may appeal the outcome or sanctions decisions, on the grounds set below, to the President or the President's designee(s). The purpose of an appeal is not to initiate a review of substantive issues of fact or to re-hear the case. All appeals must be in writing and made within ten (10) business days of the date of a decision on sanctioning. The President or designee(s) shall consider the student's entire academic and/or disciplinary record, review all relevant and available information and any information submitted by the student, and shall render a decision within ten (10) business days of the date of the date of the appeal. The President or designee(s) may (i) return the case to the Affirmative Action Officer, Dean of Students, or the Council and task them with reviewing the decision with the substantial new information;

(ii) return the case to the Affirmative Action Officer, Dean of Students or the Council to correct the procedural problem and re-review the case; or (iii) change the sanction or task the Dean of Students or the Council with reviewing and amending the originally imposed sanction. If the original decision is upheld by the President or designee(s), this decision will be final. Additionally, decisions made by the President or designee(s) are also final.

- Students found responsible for violating this policy may submit an appeal on the following limited grounds: procedural error affecting the decision or sanction; the appearance of substantive new evidence not available at the time of the decision; and/or excessiveness or insufficiency of the sanction. Neither deliberate omission of information by the appealing party in the original investigation nor disagreement with the decision or sanction are, by themselves, grounds for appeal. Any new evidence or proof of a procedural error should be included in the request for review. In cases where the Dean refers a matter to the Council for consideration of suspension or expulsion, the student may not appeal the Dean's determination, but they may appeal the decision(s) of the Council, as set forth in this policy.
- Complaint and Investigation Procedure Where an Employee is the Respondent Any person who believes they may have been a victim of or who believes they may have witnessed discrimination, harassment, or retaliation committed by an employee should report the incident to the Affirmative Action Officer in the Office of Compliance and Audit at 212 217.3360, or 333 Seventh Avenue, 16th Floor. Alternatively, such incidents may be reported to FIT's Office of Human Resource or any senior administrator, dean, department director, department chairperson or coordinator, or any other person with supervisory responsibility. Although such complaints need not be in writing, FIT strongly encourages individuals to file a written complaint. Any person with supervisory responsibility who receives a complaint, formally or informally, in writing, orally or otherwise, of discrimination, harassment, or retaliation must report such information to the Affirmative Action Officer immediately.

• Pre-Investigation

The Affirmative Action Officer will review the report and conduct an initial assessment to determine if the case falls within the scope of this policy and its procedures. Following the initial assessment, the Affirmative Action Officer may take any of the following actions:

- If the Affirmative Action Officer determines that the report, even if substantiated, would not rise to the level of a policy violation, the Affirmative Action Officer determines that there will be insufficient information to investigate the matter, the Affirmative Action Officer may dismiss the report. Under these circumstances, the Affirmative Action Officer will inform the parties of the dismissal.
- If the Affirmative Action Officer determines at any point that a matter may be resolved through an informal process, or upon request of either the Complainant or the Respondent at any time prior to the conclusion

of the investigation, the Affirmative Action Officer may begin that process by first discussing the possibility with the Complainant.

- If the Affirmative Action Officer determines that the complaint is outside the scope of this policy and would be more appropriately handled by another office, the Affirmative Action Officer may refer the report to another office for review. The Affirmative Action Officer will inform the parties of the transfer in writing.
- If the Affirmative Action Officer determines that the report would, if substantiated, constitute a violation or this policy, the Affirmative Action Officer will initiate an investigation and determine appropriate interim measures and accommodations, if any.
- To the extent necessary to prevent violations of this policy, the Affirmative Action Officer will recommend interim measures to protect individuals to the Vice President for Human Resource Management and Labor Relations or their designee(s), which may include, but are not limited to, providing support services, changing working arrangements, or suspending employees alleged to have violated this policy during the pendency of an investigation.

o Investigation

The Affirmative Action Officer will interview the parties to the complaint separately and advise them of their rights at the outset of the investigation including their right to have a union representative, non-legal advisor, or legal counsel present at any meeting or hearing, as set forth above. The Affirmative Action Officer will notify the Respondent of the facts underlying the allegations of discrimination, discriminatory harassment, or retaliation. Each party will be notified prior to any meeting or hearing they are eligible to attend. The Affirmative Action Officer will interview witnesses as necessary. At the conclusion of each interview, the Affirmative Action Officer will review the notes with the interviewee.

o Final Report

If the Respondent does not accept responsibility for the charges, and the Complainant and the Respondent have not consented to an informal resolution process, after the conclusion of the investigation of the facts, the Affirmative Action Officer will prepare a report, which will include findings of fact, findings of responsibility, and the Affirmative Action Officer's rationale for any decisions.

o Disciplinary Sanctions

- For employees in the collective bargaining unit, the Vice President for Human Resource Management and Labor Relations or his or her designee(s) will review the final report and determine appropriate action, which may include disciplinary action or other action under the applicable collective bargaining agreement.
- For employees not in the collective bargaining unit, the Vice President for Human Resource Management and Labor Relations or his or her designee(s) will review the final report and may make a recommendation to the President to take such administrative action,

including, but not limited to, disciplinary action such as dismissal, demotion, reassignment, suspension, reprimand, removal of privileges, or training.

• Employees will be notified of the outcome of the investigation and/or discipline at the appropriate time.

o Third Party as Complainant or Respondent

When a third party is involved as a Complainant or Respondent, FIT will use the disciplinary procedures that are generally consistent with the procedures stated in Section II.(1) (Students) or Section II.(2) (Employees), appropriately modified based on the particular circumstances involved, the status of the member of the FIT community involved in the complaint, and taking into account privacy requirements.

• External Remedies

Any student or employee may file charges with external enforcement agencies, such as the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, the New York City Commission on Human Rights, the Office for Civil Rights of the U.S. Department of Education, the Office of Federal Contract Compliance of the U.S. Department of Labor, or other agencies having jurisdiction over such charges. In general, the deadline to file such charges runs from the last date of unlawful harassment or discrimination, not from the date that an internal FIT complaint is resolved. The complainant is not required to wait until an internal FIT complaint is resolved before filing a charge with one or more of these agencies.

Violations

N/A

Related Policies

- Bias Crime Prevention
- <u>Code of Student Conduct</u>
- Disability Accommodations and Support Services
- <u>Religious Accommodations</u>
- <u>Sexual Misconduct Response</u>

Related Documents

- <u>Collective Bargaining Agreement Between Fashion Institute of Technology State</u> University of New York and United college Employees of Fashion Institute of Technology Local 3457 American Federation of Teachers
- FIT's Employee Handbook

Contacts

 Affirmative Action Officer/Title IX Coordinator Office of Compliance and Audit 333 Seventh Ave, 16th Floor titleix@fitnyc.edu 212 217.3360 Vice President for Human Resource Management and Labor Relations Office of Human Resource
333 Seventh Ave, 16th Floor
212 217.3650

• Dean of Students Office of Enrollment M

Office of Enrollment Management and Student Success Business and Liberal Arts Center, Room B221 212 217.3800